

AMENDED IN ASSEMBLY JULY 14, 2009

AMENDED IN ASSEMBLY JULY 6, 2009

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE APRIL 27, 2009

AMENDED IN SENATE APRIL 14, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 774

Introduced by Senator Ashburn

February 27, 2009

An act to amend Section 16501 of the Welfare and Institutions Code, relating to children's services.

LEGISLATIVE COUNSEL'S DIGEST

SB 774, as amended, Ashburn. Social workers: criminal history.

Existing law requires the counties, with the assistance of the State Department of Social Services, to provide child welfare services, including emergency response, foster care placement, adoption services, and family maintenance and reunification. Under existing law, counties may secure from the Department of Justice a criminal record for all county welfare department employees who have frequent and routine contact with children, if the employees provide services to children who are alleged victims of abuse, neglect, or exploitation. If the employee has been convicted of a crime, other than a minor traffic violation, the county welfare director must determine whether there is substantial and convincing evidence to support a reasonable belief that the employee is of good character. Existing law provides specified crimes for which

the employee must be suspended from duties involving frequent and routine contact with children.

This bill would require a county, ~~before making~~ *if an applicant is otherwise qualified for the position and the county is likely to make an offer of employment either to an a new applicant for, or transferring a current employee to, for* a position with frequent and routine contact with children, if the employee will provide services to children who are alleged victims of abuse, neglect, or exploitation, to secure from the Department of Justice a criminal record to determine if the person has ever been convicted of specified crimes. The bill would prohibit the county from employing the person under prescribed circumstances. The bill would allow the county to require the person to pay any fees charged by the Department of Justice for the processing of the criminal history and an additional fee in an amount not more than the amount sufficient to cover the costs to the county of administering the criminal record checks.

This bill would exclude a person who has obtained a certificate of rehabilitation, or with respect to whom the accusation or information has been dismissed, from being considered convicted for purposes of the bill.

This bill would also permit a county to obtain fingerprints from specified current employees for the purpose of obtaining a criminal record from the Department of Justice. The bill would require the county to terminate or suspend from any duties involving frequent and routine contact with children an employee whose criminal record includes conviction for specified crimes.

Because this bill would require the counties to take additional steps to hire certain employees, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 16501 of the Welfare and Institutions Code is amended to read:

16501. (a) As used in this chapter, “child welfare services” means public social services that are directed toward the accomplishment of any or all the following purposes: protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; preventing or remedying, or assisting in the solution of problems that may result in, the neglect, abuse, exploitation, or delinquency of children; preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems and preventing breakup of the family where the prevention of child removal is desirable and possible; restoring to their families children who have been removed, by the provision of services to the child and the families; identifying children to be placed in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

“Child welfare services” also means services provided on behalf of children alleged to be the victims of child abuse, neglect, or exploitation. The child welfare services provided on behalf of each child represent a continuum of services, including emergency response services, family preservation services, family maintenance services, family reunification services, and permanent placement services. The individual child’s case plan is the guiding principle in the provision of these services. The case plan shall be developed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the jurisdictional hearing pursuant to Section 356, whichever comes first.

(1) Child welfare services may include, but are not limited to, a range of service-funded activities, including case management, counseling, emergency shelter care, emergency in-home caretakers, temporary in-home caretakers, respite care, therapeutic day services, teaching and demonstrating homemakers, parenting

1 training, substance abuse testing, and transportation. These
2 service-funded activities shall be available to children and their
3 families in all phases of the child welfare program in accordance
4 with the child's case plan and departmental regulations. Funding
5 for services is limited to the amount appropriated in the annual
6 Budget Act and other available county funds.

7 (2) Service-funded activities to be provided may be determined
8 by each county, based upon individual child and family needs as
9 reflected in the service plan.

10 (3) As used in this chapter, "emergency shelter care" means
11 emergency shelter provided to children who have been removed
12 pursuant to Section 300 from their parent or parents or their
13 guardian or guardians. The department may establish, by
14 regulation, the time periods for which emergency shelter care shall
15 be funded. For the purposes of this paragraph, "emergency shelter
16 care" may include transitional shelter care facilities as defined in
17 paragraph (11) of subdivision (a) of Section 1502 of the Health
18 and Safety Code.

19 (b) As used in this chapter, "respite care" means temporary care
20 for periods not to exceed 72 hours. This care may be provided to
21 the child's parents or guardians. This care shall not be limited by
22 regulation to care over 24 hours. These services shall not be
23 provided for the purpose of routine, ongoing child care.

24 (c) The county shall provide child welfare services, as needed,
25 pursuant to an approved service plan, and in accordance with
26 regulations promulgated, in consultation with the counties, by the
27 department. Counties may contract for service-funded activities
28 as defined in paragraph (1) of subdivision (a). Each county shall
29 use available private child welfare resources prior to developing
30 new county-operated resources when the private child welfare
31 resources are of at least equal quality and lesser or equal cost as
32 compared with county-operated resources. Counties shall not
33 contract for needs assessment, client eligibility determination, or
34 any other activity as specified by regulations of the State
35 Department of Social Services, except as specifically authorized
36 in Section 16100.

37 (d) Nothing in this chapter shall be construed to affect duties
38 that are delegated to probation officers pursuant to Sections 601
39 and 654.

1 (e) A county may utilize volunteer individuals to supplement
2 professional child welfare services by providing ancillary support
3 services in accordance with regulations adopted by the State
4 Department of Social Services.

5 (f) As used in this chapter, emergency response services consist
6 of a response system providing in-person response, 24 hours a day,
7 seven days a week, to reports of abuse, neglect, or exploitation, as
8 required by Article 2.5 (commencing with Section 11164) of
9 Chapter 2 of Title 1 of Part 4 of the Penal Code, for the purpose
10 of investigation pursuant to Section 11166 of the Penal Code and
11 to determine the necessity for providing initial intake services and
12 crisis intervention to maintain the child safely in his or her own
13 home or to protect the safety of the child. County welfare
14 departments shall respond to a report of imminent danger to a child
15 immediately and to all other reports within 10 calendar days. An
16 in-person response is not required when the county welfare
17 department, based upon an evaluation of risk, determines that an
18 in-person response is not appropriate. This evaluation includes
19 collateral, contacts, a review of previous referrals, and other
20 relevant information, as indicated.

21 (g) As used in this chapter, “family maintenance services” means
22 activities designed to provide in-home protective services to
23 prevent or remedy neglect, abuse, or exploitation, for the purposes
24 of preventing separation of children from their families.

25 (h) As used in this chapter, “family reunification services” means
26 activities designed to provide time-limited foster care services to
27 prevent or remedy neglect, abuse, or exploitation, when the child
28 cannot safely remain at home, and needs temporary foster care,
29 while services are provided to reunite the family.

30 (i) As used in this chapter, “permanent placement services”
31 means activities designed to provide an alternate permanent family
32 structure for children who, because of abuse, neglect, or
33 exploitation, cannot safely remain at home and who are unlikely
34 to ever return home. These services shall be provided on behalf
35 of children for whom there has been a judicial determination of a
36 permanent plan for adoption, legal guardianship, or long-term
37 foster care.

38 (j) As used in this chapter, “family preservation services” include
39 those services specified in Section 16500.5 to avoid or limit
40 out-of-home placement of children, and may include those services

1 specified in that section to place children in the least restrictive
2 environment possible.

3 (k) (1) (A) An applicant applying for, or an employee
4 transferring to, a position with the county welfare department who
5 will have frequent and routine contact with children, if the
6 prospective employee will provide services to children who are
7 alleged victims of abuse, neglect, or exploitation, he or she shall
8 sign a declaration under penalty of perjury regarding prior criminal
9 conviction and shall provide a set of fingerprints to the county
10 welfare director.

11 (B) If the county determines that a prospective employee
12 specified in subparagraph (A) is otherwise qualified for the position
13 applied for and the county is likely to make an offer of
14 employment, ~~prior to making the offer~~, the county welfare director
15 shall secure from the Department of Justice a criminal record to
16 determine whether the prospective employee has ever been
17 convicted of a crime, whether state or federal, other than a minor
18 traffic violation. The Department of Justice shall provide a state
19 and federal level response to the county pursuant to subdivision
20 (p) of Section 11105 of the Penal Code. The Department of Justice
21 shall furnish the information to the county and shall also send a
22 copy of the information to the applicant. The county shall request
23 from the Department of Justice subsequent arrest notification
24 service, as provided pursuant to Section 11105.2 of the Penal Code,
25 for persons described in subparagraph (A) that are hired by the
26 county for a position that includes frequent and routine contact
27 with children.

28 (C) If it is found that a person to whom subparagraph (B) applies
29 has been convicted of a crime, other than a minor traffic violation,
30 the county welfare director shall determine whether the crime is
31 substantially related to the qualifications, functions, or duties of
32 the position and if so, whether there is substantial and convincing
33 evidence to support a reasonable belief that the person is of good
34 character so as to justify frequent and routine contact with children.
35 In making this determination, the county welfare director ~~may~~
36 ~~consider factors, including (i) shall consider~~ the nature and
37 seriousness of the conduct or crime under consideration and its
38 relationship to the person's employment duties and responsibilities;
39 ~~(ii) responsibilities. The director may also consider any or all of~~
40 ~~the following: (i) activities since conviction, including employment~~

1 or participation in therapy or education, that would indicate
2 changed behavior; ~~(iii)~~ (ii) the time that has elapsed since the
3 commission of the conduct or offense and the number of offenses;
4 ~~(iv)~~ (iii) the extent to which the person has complied with any
5 terms of parole, probation, restitution, or any other sanction
6 lawfully imposed against the person; ~~(v)~~ (iv) any rehabilitation
7 evidence, including character references, submitted by the person;
8 ~~(vi)~~ (v) employment history and current employer
9 recommendations; and ~~(vii)~~ (vi) circumstances surrounding the
10 commission of the offense that would demonstrate the unlikelihood
11 of repetition. The applicant shall provide evidence to the welfare
12 director for consideration. If it is not found that the person is of
13 good character so as to justify frequent and routine contact with
14 children, the county is prohibited from hiring that person.

15 (D) The county is prohibited from hiring a person to whom
16 subparagraph (B) applies if the person has been convicted of a sex
17 offense against a minor, or has been convicted of a felony offense
18 specified in Section 220, 243.5, 245, 264.1, 273d, 273.5, 288, 289,
19 or 290 of the Penal Code, or in subdivision (a) of Section 273a of,
20 or subdivision (a) or (b) of Section 368 of, the Penal Code, or has
21 been convicted of an offense specified in subdivision (c) of Section
22 667.5 of the Penal Code, or a conviction for child abuse pursuant
23 to Section 273a, 273ab, or 273d of the Penal Code.

24 (E) Notwithstanding subparagraph (D), the county welfare
25 director may grant an exemption if the prospective employee, who
26 was convicted of a crime specified in subparagraph (D) has
27 received a certificate of rehabilitation pursuant to Chapter 3.5
28 (commencing with Section 4852.01) of Title 6 of Part 3 of the
29 Penal Code, or if the accusation or information against the person
30 has been dismissed and he or she has been released from all
31 disabilities and penalties resulting from the offense pursuant to
32 Section 1203.4 of the Penal Code. In that case, the county welfare
33 director may give the prospective employee an opportunity to
34 explain the conviction and shall consider that explanation in the
35 evaluation of the criminal conviction record required pursuant to
36 subparagraph (C).

37 (F) If no criminal record information has been recorded, the
38 county welfare director shall cause a statement of that fact to be
39 included in that person's personnel file.

(2) For purposes of this subdivision, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that the county welfare director is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this subdivision, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(3) The county may require a person to whom subparagraph (B) of paragraph (1) applies to pay any fees charged by the Department of Justice and an additional fee in an amount that shall not exceed the costs to the county of administering this subdivision.

(4) A county may require a current employee who has frequent and routine contact with children, if the employee provides services to children who are alleged victims of abuse, neglect, or exploitation, to provide fingerprints for the purpose of obtaining a criminal record from the Department of Justice. If the criminal record returns a conviction for a crime, other than a minor traffic violation, the county welfare director shall make the determination required in subparagraph (C) of paragraph (1) to determine the employee's employment and job assignment status. If the criminal record returns a conviction for any of the offenses listed in subparagraph (D) of paragraph (1), the employee shall, subject to subparagraph (E) of paragraph (1), either be terminated or suspended from any duties involving frequent and routine contact with children.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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